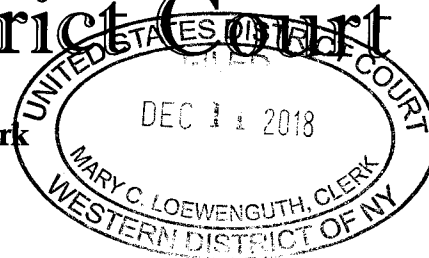


United States District Court

for the
Western District of New York



United States of America

v.

RAUL ABIDEL MARTINEZ

Defendant.

Case No. 18-MJ- 4176

CRIMINAL COMPLAINT

I, RYAN J. SZWEJBKA, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about December 4, 2018, in the County of Monroe, in the Western District of New York, the defendant violated offenses described as follows:

knowingly and unlawfully possessing a firearm and/or ammunition by a convicted felon, in violation of Title 18, United States Code, Section 922(g)(1).

SEE ATTACHED AFFIDAVIT OF SPECIAL AGENT RYAN J. SZWEJBKA.

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

A handwritten signature in black ink, appearing to read "Ryan J. Szwejbka".

Complainant's signature

S/A RYAN J. SZWEJBKA

Printed name and title

Sworn to before me and signed in my presence.

Date: December 11, 2018

A handwritten signature in black ink, appearing to read "Marian W. Payson".

Judge's signature

City and State: Rochester, New York

HONORABLE MARIAN W. PAYSON
UNITED STATES MAGISTRATE JUDGE

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

18-MJ- 4176

-v-

AFFIDAVIT

RAUL ABIDEL MARTINEZ,

Defendant

State of New York)
County of Monroe) ss
City of Rochester)

I, Ryan J. Szwejbka, affirm to the following facts:

1. Your affiant, Special Agent Ryan J. Szwejbka, states that I am a Senior Special Agent with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, & Explosives (hereinafter designated as ATF), and am assigned to the Rochester, New York Field Office. Your affiant is a graduate of the Criminal Investigator School and the ATF National Academy, both located at the Federal Law Enforcement Training Center in Glynco, Georgia. Your affiant has been employed as an ATF Special Agent for over seventeen years. As part of my professional experience, I have participated in State and Federal investigations involving the illegal possession of firearms and narcotics. Previously, I was employed by the State of South Carolina as a Probation and Parole Agent for one and one half years. I earned a Bachelor's of Science Degree from the University of South Carolina (USC) in Criminal Justice in 1996. I received my Master's Degree from USC in Criminal Justice in 1999. I have participated in the service of State and Federal search and seizure warrants and have seized or assisted in seizing contraband, including firearms, ammunition, documentary evidence and

contraband. I further state that I am the kind of Special Agent as delineated in Title 18, United States Code, Section 3051.

2. This affidavit is submitted in support of a criminal complaint against Raul A. MARTINEZ, (hereinafter "MARTINEZ"), for violations of Title 18, United States Code, Section 922(g)(1) (felon in possession of a firearm and/or ammunition). The assertions made herein are based solely upon the personal knowledge of your affiant or upon information I have received from this investigation, including various police reports produced in relation to the arrest of the defendant and discussions with other law enforcement agents and officers, all of which are true and correct to the best of my knowledge and belief. Further, your affiant has had discussions with law enforcement officers involved in this investigation who have confirmed the accuracy of the information contained within this affidavit. Since this affidavit is being submitted for a limited purpose, I have not included each and every fact that I know concerning this investigation. Rather, I have set forth only those facts that relate to the issue of whether probable cause exists to believe that the defendant committed the above-mentioned offenses. In support thereof, I respectfully state the following:

3. On or about December 4, 2018, WPD received a phone call at approximately 3:00 a.m. from a resident at 1267 Wall Road located in the town of Webster, New York, after observing a male outside shining a flashlight into his barn. The resident described the male as wearing dark clothing and on a bicycle or moped type mode of transportation with a bright headlight. The resident observed the individual leave his/her property traveling westbound on Wall Road towards Holt Road. WPD Officer B. Schmidt responded to Wall Road and

observed MARTINEZ, who matched the description provided by the witness at 1267 Wall Road, in front of 1215 Wall Road. Officer Schmidt stopped and questioned MARTINEZ, who advised Officer Schmidt that he had a BB gun in his backpack. Officer Schmidt observed MARTINEZ was wearing a body armor vest under his clothing. Officer Schmidt conducted a pat frisk for officer safety purposes and discovered an unloaded .38 caliber Iver Johnson, Model US Revolver Company, revolver bearing serial number D24893, in MARTINEZ'S waistband. A search of MARTINEZ'S backpack revealed a loaded Euroarms, Brescia New Army Model, .44 caliber black powder handgun bearing serial number 11221, with the hammer back and a firing cap in place, and a disassembled Savage/Stevens Model 94 12 gauge shotgun bearing serial number P331887. MARTINEZ was arrested for Criminal Possession of a Weapon in the 3rd degree and transported to the WPD. WPD discovered that MARTINEZ was on Federal Probation stemming from a Bank Robbery conviction and contacted Federal Probation.

4. Continuing on or about December 4, 2018, your affiant was contacted by RPD Investigator Sal Amato, who relayed the information regarding MARTINEZ'S arrest in Webster. Investigator Amato advised that RPD was with Federal Probation at MARTINEZ'S residence located at 425 Portland Avenue, Rochester, New York. Your affiant spoke via phone with United States Federal Probation Officer Cathy Buckert, and she advised the following information. She summarized the arrest of MARTINEZ earlier in the morning, and stated that she had submitted a search application for MARTINEZ'S residence. MARTINEZ resides in a boarding house and stays in a locked single bedroom and is the only person with dominion and control of that room. Chief United States Probation Officer San

Giacomo authorized the search application. Officer Buckert advised she obtained the keys to “the defendant’s” room from MARTINEZ, which were on his person when arrested by WPD.

5. Your affiant was requested to respond to MARTINEZ’S residence located at 425 Portland Avenue to assist because additional firearms were located. Upon arrival, your affiant observed numerous firearms and ammunition that were located and listed as follows:

- One (1) rusted revolver with no markings
- One (1) small revolver with markings “Defender” on barrel
- One (1) blank .45 caliber revolver loaded with six (6) rounds of live blank cartridges
- One (1) American Standard handgun bearing number 12014
- One (1) Remington Model 870 12 gauge Shotgun bearing serial number B086222M
- One (1) Anderson Manufacturing, Model AM-15, .223/5.56 mm caliber rifle lower receiver (firearm) bearing serial number 14077160
- Twenty-five (25) blue 12 gauge shotgun rounds of ammunition
- One (1) box of American Eagle brand .22 caliber long rifle rounds
- Five (5) rounds of Remington 12 gauge ammunition
- Five (5) rounds of Winchester 12 gauge ammunition
- Twenty-eight (28) rounds of Winchester Colt .45 caliber ammunition

- Eighteen (18) rounds of Winchester-Western .348 Super-Win rounds of ammunition
- Numerous brass shell casings and primers for reloading purposes

6. Of the nine (9) firearms, three (3), meet the federal definition of a firearm according to Title 18, United States Code, Section 921(a)(3). The following firearms and ammunition were researched by your affiant and were not manufactured in the State of New York, and therefore would have had to travel in, and affect interstate/foreign commerce in order to be possessed in the State of New York by MARTINEZ:

FIREARMS:

- .38 caliber Iver Johnson, Model US Revolver Company, revolver bearing serial number D24893
- Savage/Stevens Model 94 12 gauge shotgun bearing serial number P331887
- Anderson Manufacturing, Model AM-15, .223/5.56 mm caliber rifle lower receiver (firearm) bearing serial number 14077160

AMMUNITION:

- Winchester various calibers – 51 rounds
- Remington 12 gauge – 5 rounds

7. RPD Investigators Sal Amato and Andrew Taylor interviewed MARTINEZ at the Clinton Section RPD office. Prior to the interview, MARTINEZ was read his Miranda warning verbatim from the Rochester Police Department Notification and Waiver Form 1185. MARTINEZ waived his rights and agreed to speak. MARTINEZ admitted he was

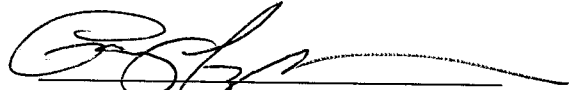
wearing a ballistic vest and possessed the firearms found in his possession by the Webster Police Department. MARTINEZ further stated that he could have shot the WPD officer if he wanted to but he didn't, and only one gun was loaded. When asked about the firearms and ammunition found in his bedroom, MARTINEZ stated that anything that was found to be illegal, he found on the street and he was planning on turning it in to the proper authorities, however, he never got around to it.

8. A review of MARTINEZ'S criminal history reveals that the defendant has multiple prior federal felony convictions in the Western District of New York:

- a. On or about July 11, 2007 MARTINEZ pled guilty in District Court, Western District of New York, to the crime of Felon in Possession of a Firearm, and was sentenced to a term of imprisonment for 46 months in the Bureau of Prisons.
- b. On or about August 23, 2011, MARTINEZ pled guilty in District Court, Western District of New York, to the crime of Bank Robbery, and was sentenced to 51 months plus 9 months consecutive on the TSR violation of the aforementioned Felon in Possession of a Firearm charge, for a total term of 60 months.

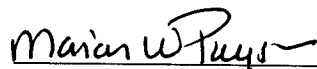
9. Based on the above information, your affiant submits there is probable cause to believe that on December 4, 2018, in the City of Rochester, County of Monroe, Western

District of New York, RAUL ABIDEL MARTINEZ was in violation of Title 18, United States Code, Section 922(g)(1) (felon in possession of a firearm and/or ammunition).



Senior Special Agent Ryan J. Szwejbka
Bureau of Alcohol, Tobacco, Firearms,
and Explosives

Sworn to and subscribed to
before me this 11 day of December, 2018.



HONORABLE MARIAN W. PAYSON
United States Magistrate Judge